



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0728, FRL-9903-58-Region 8]

Disapproval, Approval and Promulgation of Air Quality Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards; Prevention of Significant Deterioration; Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving the State Implementation Plan (SIP) submissions from the State of Wyoming to demonstrate that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter (PM_{2.5}) on July 18, 1997 and on October 17, 2006. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet infrastructure requirements. The State of Wyoming provided infrastructure submissions for the 1997 and 2006 PM_{2.5} NAAQS on March 26, 2008 and August 19, 2011, respectively. EPA is also approving revisions to Wyoming's Prevention of Significant Deterioration (PSD) program that incorporate necessary provisions from EPA's 2010 PM_{2.5} Increment Rule.

DATES: This final rule is effective [insert date 30 days after publication in the Federal

Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No.EPA-R08-OAR-2011-0728. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Ayala, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6142, ayala.kathy@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context

indicates otherwise.

- (ii) The initials CBI mean or refer to confidential business information.
- (iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iv) The initials NAAQS mean or refer to national ambient air quality standards.
- (v) The initials NSR mean or refer to new source review.
- (vi) The initials PM mean or refer to particulate matter.
- (vii) The initials PM_{2.5} mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
- (viii) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (ix) The initials SIP mean or refer to State Implementation Plan.

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I. Background

Infrastructure requirements for SIPs are provided in sections 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of

proposed rulemaking (NPR), published on September 6, 2013 (78 FR 54828).

In the NPR, EPA proposed to approve Wyoming's March 26, 2008 and August 19, 2011 submissions for the following infrastructure elements for the 1997 and 2006 PM_{2.5} NAAQS: (A), (B), (C) with respect to minor New Source Review (NSR) and PSD requirements, (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). We also proposed to approve revisions to the Wyoming Air Quality Standards and Regulations (WAQSR), Chapter 6, Section 4, as submitted on May 24, 2012, which incorporate the requirements of the 2010 PM_{2.5} Increment Rule; specifically, revisions to: Chapter 6, Section 4 (a) Definitions of "Baseline area," "Major source baseline date," and "Minor source baseline date"; Chapter 6, Section 4(b)(i)(A)(I) Table 1; Chapter 6, Section 4(b)(viii); and Section 14. The reasons for our approval are provided in detail in the NPR. We have also separately completed our proposed action of June 24, 2013, 78 FR 37752, approving Wyoming's March 8, 2013 submittal to regulate greenhouse gases under Wyoming's PSD program and concurrently rescinding our corresponding federal implementation plan. With these updates to the State's approved PSD program, Wyoming's infrastructure submissions for the 1997 and 2006 PM_{2.5} NAAQS are approvable with respect to the PSD requirements in infrastructure elements (C) and (J).

For reasons explained in the NPR, EPA proposed to disapprove Wyoming's March 26, 2008 and August 19, 2011 submittals for the section 110(a)(2)(E)(ii) infrastructure element, related to CAA section 128, State Boards, for the 1997 and 2006 PM_{2.5} NAAQS. EPA is taking

no action at this time on infrastructure element (D)(i), which concerns interstate transport of pollutants, for the 2006 PM_{2.5} NAAQS.

II. Response to Comments

We received one set of comments from the Wyoming Department of Environmental Quality (DEQ). DEQ supported our proposed approval of Wyoming's infrastructure submissions for the 1997 and 2006 PM_{2.5} NAAQS for elements (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). However, DEQ took issue with certain aspects of our action.

Comment: DEQ states that EPA, in our proposal notice, summarized, and in some cases incorrectly stated, the references within the infrastructure SIP submittals to various regulatory and non-regulatory provisions. DEQ asked that EPA "correct the citations" in the summaries "to ensure accuracy and maintain consistency" between EPA's notices and Wyoming's submittals.

Response: EPA disagrees with certain portions of this comment. In our proposal notice, the summaries of the state's submittals were merely meant to be descriptive in general terms. For the most part, these summaries accurately stated that the infrastructure SIP submittals cited provisions "included" in various chapters of the WAQSR. By this, we meant the submittals had cited certain provisions included within the chapters; we did not mean that the submittals cited the entire chapter. The summaries did not identify any particular provisions with those Chapters as legally relevant. Instead, our separate analysis for each element explained which provisions were relevant in meeting requirements of specific elements. EPA notes that the infrastructure

SIP submittals (which are included in the docket for this rulemaking) speak for themselves and EPA does not need to reproduce them verbatim (or the exact citations within them).

EPA does agree that, in a few instances, DEQ correctly notes that EPA erred in its summary. For element (B), DEQ is correct that the submittals did not cite any provisions within Chapter 1 of the WAQSR. For element (F), the proposal notice omitted a comma, making it appear that the submittals cited 1979 versions of certain provisions in Chapters 6 and 7, instead of the current versions. For element (H), although EPA did not include in our summary all the provisions cited in the submittals, EPA did reference the cited provisions in our analysis. For the public notification requirements in element (J), DEQ is correct that the submittals described a document as “non-regulatory.” For element (K), EPA agrees that DEQ’s description of the submittal is correct. None of these minor corrections to our summaries in any way changes or modifies EPA’s analysis of how the submittals for the 1997 and 2006 PM_{2.5} NAAQS substantively met infrastructure requirements. As a result, these minor corrections do not change our proposed action on the submittals.

Comment: DEQ requested that EPA add approval language specifically citing elements (E)(i) and (E)(iii) in our final rule.

Response: EPA has examined the proposal to be sure that we adequately addressed these elements in our proposal. Although we did not specifically cite elements (E)(i) and (E)(iii) in our paragraph analyzing Wyoming’s submittal, the paragraph introducing our description and analysis of Wyoming’s submittal cited (and in fact quoted) those two elements. In context, the

introductory paragraph makes clear that the description and analysis address elements (E)(i) and (E)(iii). Furthermore, in section VI of our proposal notice, we specifically stated that we proposed to approve the infrastructure SIP submittals for the 1997 and 2006 PM_{2.5} NAAQS for (among others) elements (E)(i) and (E)(iii). Finally, to ensure that our approval of these elements is clear, the notice for this final action specifically states that we are approving the submittals for (among others) elements (E)(i) and (E)(iii).

Comment: DEQ requested that EPA remove our discussion of the State's minor NSR program from the final approval of the infrastructure SIP submissions. DEQ stated that the minor NSR program in WAQSR Chapter 6, Section 2 is an approved program and is not at issue in an infrastructure SIP action. DEQ stated that the reference to WAQSR Chapter 6, Section 2 is outside the scope of EPA's action on the submissions.

Response: EPA disagrees with this comment. First, we note that DEQ, in both of its infrastructure submissions, specifically cited WAQSR Chapter 6, Section 2 as part of how the Wyoming SIP addresses infrastructure element (C). It is appropriate for EPA, in acting on an infrastructure SIP submission, to assess the State's own description of how the State's SIP meets infrastructure requirements, and as we next explain, it was appropriate for the State in addressing element (C) to cite the minor NSR program.

Second, in this action on Wyoming's infrastructure submittals for the 1997 and 2006 PM_{2.5} NAAQS, EPA appropriately assessed whether Wyoming's approved minor NSR program addressed regulation of PM_{2.5} for sources subject to the program. EPA's position is that an

infrastructure SIP submittal should demonstrate that the state has a minor NSR program to regulate the construction of new or modified stationary sources that can address the new or revised NAAQS that triggered the State's obligation to submit an infrastructure SIP. This position follows from the language of sections 110(a)(1) and (a)(2).

Section 110(a)(1) of the Act requires states, within three years of EPA's promulgation of a new or revised NAAQS, to submit "a plan which provides for implementation, maintenance, and enforcement" of the standards. This plan, which EPA refers to as an "infrastructure SIP," must at a minimum satisfy the applicable requirements set out in the elements in section 110(a)(2) of the Act.

In particular, element 110(a)(2)(C) requires, among other things, that SIPs include "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [the NAAQS] are achieved." The program for regulation of modification of stationary sources is known as "minor NSR," and the requirements for minor NSR programs are contained in Subpart I of Part 51 in Title 40 of the Code of Federal Regulations (CFR). Given the language of element 110(a)(2)(C), it is necessary to conclude that an infrastructure SIP submittal must address the triggering new or revised NAAQS.

Comment: DEQ noted that EPA had not acted on Wyoming's May 11, 2011 submittal, which (among other things) added Section 13 to Chapter 6 of the WAQSR. DEQ stated it was concerned about "future inconsistency in the GHG PSD permitting regulations." DEQ also stated, "The State of Wyoming will experience additional harm if a construction ban goes into

effect on January 20, 2014 without EPA approval of the May 11, 2011 SIP.”

Response: EPA disagrees with the concerns expressed by DEQ. First, EPA has already approved the portion of the May 11, 2011 submittal that revised the State’s PSD program. See 76 FR 44265 (July 25, 2011). The remaining portion of the May 11, 2011 submittal added two new sections to Wyoming’s permitting rules. Section 13, entitled “Nonattainment permit requirements,” incorporates by reference federal rules at 40 CFR 51.165. Section 14, entitled “Incorporation by reference,” establishes the date of incorporation by reference of federal rules and provides information on how the public can inspect or obtain copies of the Code of Federal Regulations. In this action, we are approving a subsequent revision of Section 14 that supersedes the version of Section 14 in the May 11, 2011 submittal. Thus, the only remaining portion of the May 11, 2011 submittal that remains to be acted upon is the addition of Section 13, which addresses nonattainment NSR requirements.

First, DEQ has not identified how nonattainment NSR requirements are relevant to EPA’s action on an infrastructure SIP submittal. As stated in our proposal notice (and not disputed by DEQ), nonattainment area plan requirements under part D of title I of the Act, including the requirement in 110(a)(2)(C) for a permit program as required by part D of title I (i.e., nonattainment NSR), are not governed by the three year submission deadline in section 110(a)(1). Instead, nonattainment NSR requirements are due at the same time as other nonattainment area plan requirements are due under the Act. As a result, nonattainment NSR requirements are outside the scope of this action on Wyoming’s infrastructure SIP submittals.

Second, it does not appear that our action on Wyoming's infrastructure SIP submittals and on Wyoming's adoption of the PM_{2.5} increments could result in an inconsistency in GHG PSD permitting. We have separately completed our proposed approval of Wyoming's March 8, 2013 GHG PSD submittal. With respect to Section 13 of Chapter 6, DEQ did not identify any specific dependency between it and the March 8, 2013 GHG PSD submittal or the May 24, 2012 PM_{2.5} increment submittal that would cause any future inconsistency in GHG permitting. In addition, the March 8, 2013 GHG PSD submittal did not include Section 13, so it appears to EPA that the two are independent.

Third, DEQ has not identified any reason why EPA's inaction on the Section 13 portion of the May 11, 2011 submittal would cause a construction ban to take effect on January 20, 2014. We note that, on May 21, 2012, EPA designated the Upper Green River Basin Area in Wyoming as marginal nonattainment for the 2008 ozone standard, effective July 20, 2012. See 77 FR 30517-30518. Although DEQ does not explain how it derived its January 20, 2014 date, that date is 18 months after the effective date of the designation of the Upper Green River Basin Area.

Under 40 CFR 52.24(k), after designation of a nonattainment area and prior to EPA's approval of a nonattainment NSR program that meets the requirements of part D of title I of the CAA, the Emission Offset Interpretative Ruling, 40 CFR part 51, appendix S governs permits to construct. As stated in EPA's June 6, 2013 proposed rule for implementation of the 2008 ozone standards, 78 FR 34200-201, in EPA's 2005 promulgation of the phase 2 implementation rule for

the 1997 ozone NAAQS, “the EPA revised section 52.24(k) to eliminate language stating that if a nonattainment area did not have an approved nonattainment NSR program within 18 months after designation, a construction ban would apply.” The June 6, 2013 proposal explains that the D.C. Circuit Court of Appeal’s decision in *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009) left this revision of § 52.24(k) undisturbed, except with respect to the availability of waivers under section VI of Appendix S after the 18-month period has expired. Thus, DEQ’s concerns about a construction ban are unnecessary, as Appendix S to 40 CFR part 51 (with the exception of waivers under section VI of Appendix S after January 20, 2014) governs construction permits within the Upper Green River Basin Area until EPA approves a SIP revision containing a nonattainment NSR program that meets the requirements of part D of title I of the Act, specifically requirements contained in 40 CFR 51.165.

III. Final Action

EPA is approving Wyoming’s March 26, 2008 and August 19, 2011 submittals for the following infrastructure elements for the 1997 and 2006 PM_{2.5} NAAQS: (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). EPA is also approving revisions to WAQSR Chapter 6, Section 4, as submitted on May 24, 2012, which incorporate the requirements of the 2010 PM_{2.5} Increment Rule; specifically, revisions to: Chapter 6, Section 4(a) Definitions of “Baseline area”, “Major source baseline date”, and “Minor source baseline date”; Chapter 6, Section 4(b)(i)(A)(I) Table 1, Chapter 6, Section 4(b)(viii), and Section 14.

EPA is disapproving Wyoming's March 26, 2008 and August 19, 2011 submittals for the section 110(a)(2)(E)(ii) infrastructure element, related to CAA section 128, State Boards, for the 1997 and 2006 PM_{2.5} NAAQS. Finally, EPA is taking no action on infrastructure element (D)(i) for the 2006 PM_{2.5} NAAQS.

IV. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 USC 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves some state law as meeting Federal requirements and disapproves other state law as not meeting Federal requirements; it does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law

104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because Wyoming's SIP does not apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 15, 2013

Judith Wong
Acting Regional Administrator
Region 8

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart ZZ - Wyoming

2. Section 52.2620 is amended by:

a. The table in paragraph (c)(1):

i Under Chapter 6, revise the entry for Section 4.

ii. Under Chapter 6, add the entry for Section 14.

b. The table in paragraph (e), add the entries XXI and XXII at the end of the table.

The amendments read as follows:

52.2620 Identification of plan.

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(c) * * *

(1) * * *

State citation	Title/subject	State adopted and effective date	EPA approval date and citation ¹	Explanations
*	*	*	*	*
Chapter 6				
*	*	*	*	*

Section 4	Prevention of significant deterioration	1/13/2012, 3/28/2012	[insert Federal Register publication date] [insert Federal Register page number where document begins]	
Section 14	Incorporation by reference	1/13/2012, 3/28/2012	[insert Federal Register publication date] [insert Federal Register page number where document begins]	
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¹In order to determine the EPA effective date for a specific provision that is listed in this table, consult the Federal Register cited in this column for that particular provision.

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(e) * * *

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/ adopted date	EPA approval date and citation ³	Explanations
*	*	*	*	*
XXI. Section 110(a)(2) Infrastructure Requirements for the 1997PM _{2.5} NAAQS	Statewide	Submitted: 3/ 26/ 2008	[insert Federal Register publication date] [insert Federal Register page number where document begins]	Element (E)(ii) is disapproved

XXII. Section 110(a)(2) Infrastructure Requirements for the 2006 PM _{2.5} NAAQS	Statewide	Submitted: 8/19/2011	[insert Federal Register publication date] [insert Federal Register page number where document begins]	Element (E)(ii) is disapproved
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³ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2013-28949 Filed 12/05/2013 at 8:45 am; Publication Date: 12/06/2013]